

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.227 OF 1997.

1. The Institute Menezes Braganza.
2. Dr. Bailon De Sa. ... Petitioners.

vs.

1. The State of Goa.
2. Director of Art and Culture ... Respondents.

Shri M.B. D'Costa with J.A. Lobo for the petitioners.

Shri A.N.S. Nadkarni, Advocate General with Shri V.P. Thali, Additional Advocate General, H.R. Bharne, Government Advocate and H.D. Naik for the Respondent-State.

CORAM: V.C.DAGA AND P.V.HARDAS, JJ.

DATED: 10th October 2002.

ORAL JUDGMENT (PER V.C.DAGA, J.)

This writ petition under Article 226 of the Constitution of India is at the instance of the Institute Menezes Braganza, the petitioner No.1 and one Dr.Bailon Desai, an Indian Inhabitant, residing at Orlim, Ilhas, Goa, the 2nd petitioner, claiming to be one of the interested persons, competent to challenge the validity of the Goa Portaria Provincial No.332 dated 24th November 1871 Repeal Act, 1997 and Goa (Institute Menezes Braganca) (Supplemental provisions) Act, 1997-Act No.6 of 1997, (hereinafter referred to as the 'impugned Legislations' for short), being violative of Articles 14, 19(1)(c), and Article 21, 29 and 300A of the Constitution of India.

Crux of the dispute:

2. The crux of the dispute is the legislative act of taking over the assets of the petitioner No.1, Institute by the State of Goa. Before tracing the reasons for the impugned legislative action, it would be worthwhile to trace the historical background leading to establishment of the old Indo- Portuguese Institution presently known as " Institute Menezes Braganza ("the said Institute" for short) which was originally known as the " Institute Vasco da Gama" ('IVG' for short) founded and established on 22nd September 1871 by the then Portuguese Government by "Portaria Provincial Order No.332 of 24th November 1871" published in the Official Gazette recognising formation of an association Scientific and Literary named "Institute Vasco da Gama" and extending its approval to the statute containing seventeen articles therein.

3. It appears that the said 'IVG' functioned for few years and thereafter fell dormant and became defunct and remained so, for about 50 years, right from 1875 to 1925. The need for Literary, Scientific and Cultural institute was again strongly felt in the year 1924 by the then Portuguese Government. Consequently, the then Government issued Portaria/ Provincial Order 105 dated 10th February 1925 and Legislative Diploma No.144 (i.e. Legislative enactment No.144) dated 26th March 1925, and thus revived the said 'IVG' and approved an annual grant

of Rs.10,000/= for the purpose of administration of 'IVG'.

4. The statutory order No.7883 issued to execute the provisions of para 1 of the Article 5 of the Legislative Diploma No.1932 dated 24.9.1959, approved that the said institute shall be considered as an Official Body. It further appears that on 13.10.1960, new set of statute/ Bye laws were approved by the then Governor General of State of India vide Portaria i.e. Order No. 7883 issued in exercise of powers conferred on him under Article 5 of the Legislative Diploma No.1932 dated 24th September 1959.

5. With the liberation of Goa, the then Lt. Governor by order dated 9th July 1963 changed the name of the 'IVG' from Institute Vasco da Gama to institute Menezes Braganza (IBM) with effect from 10th July 1963 as on this day 25th death anniversary of Shri Menezes Braganza was to fall. This change in the name was in acknowledgment of the services rendered by the great Goan patriot and eminent journalist; who was responsible for hastening the end of Portuguese Colonial rule in Goa. Rest of the statute were the same. Thereafter, institute redefined its role on the liberation of Goa with an emphasis on:

(a) dissemination of findings of scientific studies, history, philosophy, economic science, ethics and law;

(b) to stimulate a sense of culture both general and specialised in the younger generation.

Since then the said institute is rendering yeomen service in the field of art and culture and has acquired an international reputation. It has one of the finest art collections in India, including signed copies of the great French masters which are archaic and priceless. The said collection has been gathered from various sources including gifts by various donors.

6. It appears that in the year 1991, fresh draft statute was prepared and the same was forwarded to the Respondent- State for its approval. It appears [[that pending approval of this draft statute, in the year 1997, some dispute cropped up with respect to the management and administration of the said institute as some persons claimed to be the Managing Committee of the Institute. It was therefore, felt necessary by the State Government to take over the assets of the said institute under the charge of Directorate of Archives and Archeology and Museum. Government of Goa. With this object, the Government of Goa on 20th March 1997,

introduced Bill No.14 of 1997, on the floor of the Assembly to achieve the said object. The statement of Objects and Reasons stated in the bill are reproduced hereinunder:

By Portaria No.332 dated 24th November 1871, the erstwhile Portuguese Government created an Institution known as Institute Vasco da Gama. Subsequent to the liberation, the then Union Territory Administration, by an order issued by the Lt. Governor in 1963, changed the name from Institute Vasco da Gama to 'Institute Menenzes Braganza'. The Institute had been established as a scientific and literary institute. Only persons of acknowledged merit in science and literature were to be the members of the institute. At present, the institute is managed by few persons. It is felt necessary to take over the assets of the institute, so that valuable artifacts held by the Institute can be maintained and displayed by the Directorate of Archives, archeology

and Museum. The present bill seeks to achieve the said purpose."

During the legislative debate, the said institute was claimed to be a Government institute on the floor of the Assembly. After adopting the Bill, by letter dated 29th April 1997, Shri Vivek Rae, Secretary Department of Education of the Respondent requested the petitioner No.2 to hand over the assets of the Institute to Shri P.P.Shirodkar, Director of Archives, Archeology and Museum of the respondent/State. The Governor extended its assent to the Repeal Bill on 2nd May 1997 and from this date it took effect as the (Portaria Provincial No.332 dated 24th November 1871) Repeal Act, 1997.

7. Aforesaid exercise of legislative power by the State of Goa has given rise to this petition to invoke writ jurisdiction of this Court under Article 226 of the Constitution of India to challenge the constitutional validity of the said legislation on various grounds set out in the petition. Grounds of challenge are to the effect that the fundamental right guaranteed under Clause (1) of sub-clause (c) of Article 19 of the Constitution India has been breached. According to the petitioners, the Goa (Portaria Provincial No.332 dated 24th November 1871) has acquired the assets of the institute which are necessary in

carrying out the objects of the institute and the abrupt disapproval of assets would deprive the petitioners of the right to continue the activities of the association to make them more meaningful, effective and purposeful. The petitioners contended that they cannot run the institute and achieve the objects of the institute for want of properties as the same are taken away. The petitioners claim to be entitled to protect their interest more particularly, to conserve the language and culture in exercise of their fundamental right guaranteed under Article 29 of the Constitution of India. According to them, right to conserve cultural heritage; to continue the association and to hold property for exercise of such right are comprehended within their right to life. As such, the petitioners submit that action of Respondent No.1 has also deprived the members of the institute the protection of their fundamental right under Article 21 of the Constitution of India.

8. On being noticed, Respondents appeared and filed their affidavit in reply, duly sworn in by the then Director of Arts and Culture and ex officio Joint Secretary to the Government of Goa, raising certain preliminary objections to the maintainability of the petition and with respect to the locus of the petitioners, the details of which we propose to refer to

while dealing with the rival contentions. The absence of resolution of the Institute on record alleged to be passed on 27th May 1997 is also pressed into service to defeat the right of the petitioners to prosecute this petition. It is also specifically pleaded in the affidavit in reply, that since the petitioner No.1 - Institute was governed by Portaria of 1960 as amended by the Government Order of 1963, the said institute was always considered as instrumentality of the State although other Portuguese citizens who had rendered outstanding service on diffusion of Portuguese culture were invited to participate and associate with the activities of the institute.

9. It was thus stated that the said institute was being controlled and managed by the Government from its own funds, as such it is not open for the petitioners to challenge the take over legislation on any of the grounds muchless on the ground of breach of fundamental rights alleged in the petition.

With the aforesaid rival pleadings on record, the rival contentions were heard.

The Arguments:

10. Shri D'costa learned Counsel for the

petitioners in his usual persuasive manner, contended that the Institute was constituted by private individuals inhabitants of the capital city (Panaji) and all that they did was to get their Bye Laws sanctioned. It was further contended that at no point of time there was any Government intervention in the foundation of the institute or its functioning. The members just got their Bye laws approved from the then Portuguese Government . In due course, the founder members left Goa and the remaining members who were unable to sustain the financial burden, approached the Government for assistance. The then Government requested that the Communicades to render financial assistance, but they refused. Thus the institute remained dormant for 50 years.

11. A Committee thereafter submitted a fresh proposal to the then Government for reorganisation of the institute which had its bye laws approved on 22nd November 1871. By Portaria/ Provincial Order No.106 dated 10th February 1925 the then Government appointed effective members. The then Governor General of Goa by Portaria/Provincial Order No.105 approved the new Statute or Bye laws of the institute created by Portaria/Provincial Order No.332 dated 24th November 1871. Article 1 acknowledged that the institute is a scientific, literary and fine arts establishment and

there was a promise that it would be provided with Government Building. The bye laws show that the institute is a private institute and it was promised certain privileges, namely subsidies, building etc. He submitted that normally Government takes advantage of financial difficulties to impose conditions more favourable to them. Whenever the Government deals with government property or government servants or government institutions a Legislative Diploma (Diploma Legislative) is enacted by the Legislative Council and Governor assents. But that by itself does not mean that the institute was a Government entity.

12. He took exception to the statements made in the Statement of Objects and Reasons clause and submitted that in Goa (Portuguese Provincial No.332 dated 24th November 1871) Bill contained false statement that the erstwhile Portuguese government created an Institute known as the Institute Vasco da Gama and that the institute was managed by a few persons as such it was necessary to take over the assets of the Institute so that valuable articles held by the institute could be maintained and displayed by the Directorate of Archives, Archeology and Museum.

13. Mr.D'costa, learned Counsel in the first place contended that the question of repealing the Order

dated 1871 did not arise as that order was defunct. The Statutes or Bye laws of the institute were substituted from time to time. The order which has approved the present statutes or Bye laws of the institute is dated 13th October 1960. The very fact that subsection 2 of section 2 provides that all assets of the institute shall stand vested in the Government shows that these assets were the private property of the Institute. In his submission, the Institute is not dissolved and the Managing Committee is not removed. The impugned piece of legislation is an autocratic, arbitrary and unconstitutional piece of legislation.

14. It was further submitted that the Association or Institution has not been dissolved. Without prejudice it is reiterated that the petitioners have a fundamental right to continue the association under Article 19(1)(C) of the Constitution of India. The President of the Institute is duly authorised by the General Body to file a petition challenging the government action vide resolution of the general body at page 325 of the paper book. He submitted that the Institute Menezes Braganza is a private institute founded by individual citizen residing at Panaji and that there is no specific denial of this fact by the Government in their return, as such it should be treated as an admission of this fact on their part.

LEGAL GROUNDS OF ATTACK

15. The main grounds of attack set up and canvassed to challenge the action of State centers around the breach of fundamental rights guaranteed under Articles 14, 19(1)(c), 21, 29 and Article 300A of the Constitution of India. The following legal propositions were canvassed by Shri D"Costa and in his well searched submissions he referred to a number of Indian authorities in support of his contentions. It was argued that :-

(i) The Institute was a private association of individuals and its primary object was to preserve the Portuguese culture. The persons, who were members of the institute are the citizens of India, having a fundamental right guaranteed by Article 19(1)(c) of the Constitution of India to form an association; which includes the right to continue the association as laid down by the Apex Court in **Damayanti vs. Union of India** 1971 (1) SCC 678, and **State of Madras vs. V.G.Rao** 1952 SCR 597.

(ii) The persons who were members of the institute being citizens of India have a fundamental right to preserve their distinct language and culture under Article 21 and 29 of the Constitution of India as

laid down by the Apex Court in **Ramsharan Autyanuprasi vs. Union of India** 1989 Supp.(1) SCC 251.

(iii) The State has deprived the institute of its property without providing for compensation to the institute. At any rate, property is necessary in order to make the exercise of the right to continue the association meaningful, effective and purposeful as such the impugned legislation is violative of Article 21 of the constitution of India. The reliance was placed on the well known judgment of the Apex Court in the cases of **Maneka Gandhi vs. Union of India** 1978 (1) SCC 555.

(iv) The Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment as laid down in **E.P. Royappa vs. State of Tamil Nadu** 1974 (4) SCC 3, and that the law must be right, fair and not arbitrary, fanciful and oppressive. The reasonableness and nonarbitrariness pervades the entire constitution and the principle enshrined in Article 14 "must guide every action whether legislative, executive or judicial" as laid down by the Apex Court in **Neelam Misra vs. Harinder Kaur** 1990(2) SCC 746 para 29.

(v) Where a State deprives cultural association of property without a provision for compensation to the association, no reasonable person

will consider the provisions as reasonable just and fair as held by the Apex Court in **State of Tamil Nadu vs. Ananthi Ammal 1995 (1) SCC 519** and **Godhra Electricity Co. Ltd., vs. State of Gujarat 1975(1) SCC 199**, as such the action is liable to be struck down as violative of Articles 14 and 300-A of the Constitution of India.

(vi) No allegation of mismanagement or misuse of the assets of whatsoever nature have been made. No fair procedure or principles of natural justice were followed. No show cause notice of any nature whatsoever; was served on the institute or its members as required and recognised by the Apex Court in **Lakshamanan vs. State of Tamil Nadu , para 47 1996(2) SCC 226**.

(vii) The Statements and Reasons for enacting the impugned legislation sets out the reasons as to why the law was enacted. It was because the institute was managed by a few persons. If this be the object, the submission is that legislative action is not inspired by reasons laid down by the Apex Court in **Shri Sitaram Sugar Co. Ltd vs. Union of India 1990(3) SCC 223**, therefore, it is liable to be struck down.

It was thus prayed that the impugned legislation be struck down being violative of Articles

14,19 (1) (c), 21, 29 AND 300-A of the Constitution of India and respondents be directed to forthwith handover all the assets and properties of the institute back to the petitioners.

GROUND OF DEFENCE

16. Per contra, Shri A.N.S. Nadkarni, learned Advocate General appearing for the respondents referred to the contents of the counter affidavit and relied upon number of Indian authorities in support of his defence, which are summarised hereinbelow:

(a) At the outset two preliminary objections which were raised may be stated:

(i) The first relates to the suppression of facts leading to non-disclosure of proper legislative history with respect to the formation and establishment of the institute.

(ii) The second relates to the disputed questions of fact which should not be investigated and the question of title should not be gone

into or decided in a writ petition as laid down in **Mahant Moti Das vs S.P.Sahi** AIR 1959 SC 942.

(b) The question of violation of fundamental rights can be decided only on admitted facts or facts taken to be proved as laid down in **Kailash Nath vs. State of U.P.** AIR 1957 SC 790.

(c) No material is on record to prove that the Institute was a private body. No pleadings are to be found in the petition as to how, when and under what circumstances petitioner No.2 with others became members of the institute who made them members or as to on what basis they claim title to the institute. A petition challenging the constitutional validity of certain provisions must be in the context of certain facts and not in abstract or vacuum as laid down by the Apex Court in **Sant Lal vs. State of Punjab**, AIR 1988 SC 485.

(d) The impugned legislation has to be presumed constitutionally valid. It is well settled that there is a strong presumption in favour of the constitutionality of the statute and the burden is upon the person who attacks it; to show that there has been a clear breach by transgression of the constitutional guarantee as held by the Apex Court in the case of **Moti**

Das vs. S.P. Sahi, AIR 1959 SC 942.

(e) The institute was a Government institute right from its inception and the expenditure for running the Institute was always spent by the State out of Budgetary provisions.

(f) All the time this institute was recognised and treated as Government Institute and as such petitioners have no locus to file this petition. Reliance is placed upon the legislative Diplomas enacted from time to time in support of the submissions.

The principal issue:

Before we deal with the aforesaid rival contentions canvassed on behalf of the rival parties to the petition, it would be appropriate to first consider the principal issue as to the status of the Institute Menezes Bragnaza. **Was it a Institute established by private individuals as contended by the petitioner or a institute controlled and financed by the Government as arm of the State to spread Portuguese culture?.** If the Institute is held to be the institute established by private individuals; then only, the various challenges set up by the petitioners will warrant consideration. As such finding on this issue will determine the

strength of the submissions canvased by the petitioners.

Consideration

18. Having heard the parties and examined documents on record, one thing is clear that the documents produced by the both parties are not in dispute. Both parties tried their best to interpret these documents in consonance with their respective submissions and tried to take their submissions to the logical end. It is no doubt true that the petitioners did not produce all the relevant documents on record and failed to make complete averments in the petition. But, no motives can be attributed to them. It is not that they were in possession of the information or documents and deliberately did not produce it on record so as to suppress material facts from the Court.

19. The very nature of the controversy relates to the establishment of a Institute which was established as far back as in the year 1871; by the then Government of Portugal. Naturally, the petitioners are not expected to have all accurate information and all relevant documents; especially; when the Institute was defunct for almost 50 years right upto 1925. Whatever documents petitioners had in their possession were produced on record by them. They did not dispute

documents produced by the respondents. On the contrary, petitioners tried to build up their case on the basis of the documents produced by the respondents. We also do not think that the petition involves disputed questions of fact, warranting any investigation thereof. As a matter of fact, all the relevant facts in the form of documents are on record to answer the issue indicated hereinabove. What is necessary is a proper interpretation of documents to reach to the proper conclusion as to whether or not the institute was established by private individuals or was it controlled and financed by the Government as its one of the arms to spread Portuguese culture and by passage of time it became a Government entity. We, therefore, overrule the preliminary objections raised by the learned Advocate General on behalf of the State.

20. Having said so, let us turn to the various document on record to determine the principal issue indicated hereinabove.

21. The first document available on record which needs consideration is **Portaria/ Provincial Order No.332 dated 22/24th November 1871**, whereunder; the Institute in question was established and approval was extended to its Statute containing 17 Articles by the then Governor General. Perusal of this document gives an indication

that the Institute was established by the private individuals with a primary object to preserve the Portuguese culture. It further appears that keeping with its common practice the portaria/ provincial order in its recognition announced the establishment of the Institute and approved the Statute of the same. Perusal of the contents of the Statute approved by the then Governor General would show that the said 'IVG' was to serve as a literary and cultural body and was expected to establish library and reading hall and organise literary and scientific talks and was further expected to publish journals. Article 10 of the said portaria/ provincial order specifically provides that the financial needs shall be met entirely by the members and makes detailed provision of the same. It further appears that after establishment of the said 'IVG' it functioned in accordance with the said portaria/ provincial order from 1871 to 1875 and used to publish a scholarly journal "Bulletin" wholly financed by the members. Thus perusal of the said portaria/ provincial order No.332, unequivocally, goes to establish that the private individuals belonging to the then intellectual society, had established the said Institute to preserve Portuguese culture and was to function as a scientific, literary and artistic body and it was expected to be the centre of the high Portuguese culture in the East. It was to be managed as private Institute though its

establishment was recognised by the then Governor General of the State of India and had extended approval to its statute. It further appears that the said Institute accordingly did function as a private Institute formed by the private individuals; may be till 1875.

22. It further appears from the documents available on record that the said 'IVG' fell dormant and remained so for almost 50 years right from 1875 to 1925. It appears that the said Institute had no members alive at that time. The need of literary scientific Institute was strongly felt in 1924. The then Government considering that the said 'IVG' has become inactive because of financial difficulties and considering that the earlier appeal to the private organisation for financial assistance was unsuccessful, issued **Portaria/ Provincial Order No.105 dated 10.2.1925**, thus reviving the said 'IVG' and approving annual grant of Rs.10,000/= for administration of the said 'IVG'.

23. It further appears that prior to 26.3.1925, the National Library of Goa used to be managed and run by the then Government itself departmentally. It appears that by **Legislative Diploma No.144 dated 26.3.1925**, the National Library of Goa (which was wholly owned by the Government) came to be attached with the

said Institute. The said National Library came to be redesignated as Vasco da Gama National Library. The said 'IVG' then came to be housed in the existing building of the National Library and it appears that all office expenses of the Institute were borne by the library unit. In view thereof, it was declared by the Legislative Diploma No.383 dated 18.12.1929 that there was no more necessity to appoint the Director of Library since the same was attached to the said 'IVG'. Thus, perusal of these three documents, namely **Portaria/ Provincial Order No.105 dated 10.2.1925, Legislative Diploma No.144 dated 26.3.1925 and Legislative Diploma No.383 dated 18.12.1929** would show that the then Government exercised its control over the said Institute and it came to be recognised as an official body to maintain Library and part Museum.

24. The **legislative enactment No.144** specifically laid down that considering the advantage of improving the present set-up of Biblioteca Nacional (National Library) and of securing for the Institute the necessary funds to promote its objective, the Legislative Council voted and the Governor General of the State of India set his seal to this enactment. Article 3 of the said legislative enactment further laid down that the National Library Vasco da Gama shall; henceforth, be technically dependent on the presidentship of the said

'IVG' and shall continue to be subordinate to the Secretariat General for administrative and disciplinary purposes. Articles 4 and 5 of the said enactment laid down that the management of the Institute Vasco da Gama shall allocate the Library halls best in keeping with the objectives of this institution and all matters related to the library, the Director of the Library shall be considered as a part of the management of the Institute without having any right to vote. All the expenses of the Institute were borne by the Library. Article 7 of this legislative diploma further laid down that until such time as the council, in its Budget for the Colony, makes an endowment for the Institute, the budget of the Fund Especial (Special Fund) referred to in the Legislative Enactment No.1 dated 14.11.1922 shall annually allot an amount of Rs.10,000/= for the said purpose. It further laid down that until the end of the current financial year, the endowment for the Institute, shall, accordingly, be fixed at Rs.2,500/-. Article 9 of the said legislative diploma laid down that all the laws to the contrary stood revoked.

25. The perusal of the above document and the provisions made therein; go to show that after revival of the said 'IVG' the National Library of Goa was made part of the Institute and the said Institute came to be more or less controlled and financed by the State. This

appears to be the period from which it gradually ceased to be the private association or organisation or the Institute managed by the private individuals. The State machineries stepped in and appear to have revived the same and slowly gained government control over the said Institute, though the said Institute was originally formed by the then individual intellectual members of the Society; the Portuguese citizens.

26. On 23.12.1957, it appears that the **Decree Law No.41472** was enacted by the competent legislature by the State Decree Law (Articles 63 and 64). It was provided therein that the National Library of Goa be detached from the said Institute and the same be governed by the Education and Health Services of the Government. This decree of law is the another document available on record to show that the functioning of the said Institute was controlled by the then Portuguese Government.

27. On 24.9.1959, the Governor General of the State of India issued **Legislative Diploma No.1932** ("said diploma" for short). By Article 5 of the said diploma it was provided that the said 'IVG' shall have staff cadre as set out therein. It was also provided that the posts of cadre referred shall be regulated by the competent order meaning thereby a Government order.

Article 6 of the said diploma reads as under:

"Art.6 - In the statement of expenditure of the General Budget of this State allotments shall be made for the maintenance of the Institute."

By Article 8 of the said diploma, the Legislative Diploma No.383 dated 18.12.1929 was revoked. The said Legislative Diploma No.1932, issued in accordance with the assent of the Legislative Council, in exercise of powers conferred under Article 151 of the Constitution of Portugal, is another document on record to show that the said Institute was controlled and financed by the Government of the day. The said diploma made provision for entire maintenance of the Institute and staff required by the Institute in accordance with the regulations which were to be made by the competent order.

28. On 29.10.1960, the Governor General of the State of India appears to have issued another **Statutory Order No.7883** in exercise of powers conferred on him under Article 155 of the Portugal Constitution. The new set of Statute appears to have been approved by the Governor General and said Statute formed integral part

of Order No.7883. The said Statutory order No.7883 was issued in view of provision of paragraph 1 of Article 5 of the Legislative Diploma No.1932 dated 21.9.1959. Article 5 of the said Diploma prescribed creation of staff cadre for the said 'IVG' to be regulated by the competent order. The said article specifically stipulated that the staff of the cadre has been approved by law. Article 6 of the said Diploma shows that the statement of expenditure of the general budget of the State allotments was to be made for the maintenance of the Institute. Article 8 provided that the Legislative Diploma No.383 dated 18.12.1929 stood revoked. It bears the signature of the then Governor General and appears to have been published in Official Bulletin No.39, Series I, dated 24.9.1929. Some of the clauses of the said Diploma clearly show that the said Institute by this time was substantially controlled and financed by the Government, even though, the Government did permit participation of Portuguese citizens in the activities of the Institute to the extent provided in the said Articles/ Bye-laws. The entire reading of the the said Diploma would go to show that the said 'IVG' by this time had acquired definite character controlled and financed by the State as arm of the State to spread Portuguese culture.

29. It further appears that the said Institute

was functioning in a Government building as provided in the Legislative Diploma No.144. The said building, in which the Institute occupied part of the premises, did belong to the Government and not to the Institute. On the ground floor of the said building National Library was functioning whose activities were integrated with the Department of Education and Health Service. The entire expenditure of repairs and maintenance of the said building was incurred by the then Government. In the public records, the said building was shown as Government building. It appears from the return filed by the State that no taxes or land revenue were recovered from the said Institute in respect of the said building. In order to substantiate this fact, it is stated in the return that several other portions of the same building in the complex allotted by the Government were used by the other societies, such as Sri Aurobindo Society, All India Women's Conference and Gomantak Sahitya Sevak Mandal from whom Government had been collecting rent/compensation. But no such rent or compensation had been collected from the said 'IVG' and entire expenditure for maintenance and working of the said Institute was always incurred by the State from the budgetary provisions made in the general budget.

29. It is further stated in the return that all the funds required for the activities of the said

Institute were provided by the State. Not only the salaries of the staff but also other expenditures on publications, telephones, office stationary, printing, advertisement, publicity, organisation of lectures, seminars, symposium, entertainment to guests of honour of Institute, Art and book exhibition, hire of sound system were incurred by the Government. In order to establish these facts, by way of illustrations copies of the orders dated 14.10.1971 and 25.6.1974 are filed on record which positively go to prove the case sought to be made out by the State in their return.

30. By Article 26 of the said 1960 Statute it was provided that the Governor General of the State of India shall be the Honorary President of the Institute. By Article 10 of the said Statue it was provided that the effective members shall be elected by secret ballot by the general assembly duly convened. But the election result shall be submitted to the Governor General for the purposes of verification as to whether the persons elected satisfy the criteria set out in para 1 of Article 10. In paragraph 3 of Article 10 it was provided that the citizen whose election has not been accepted by the Governor General shall not be elected before one year. Only Portuguese citizens residing in the territory of Portuguese India, who had acknowledged merit in any branch of human knowledge, were eligible to

became members of this Institute. By Article 33 it was also provided that the Public Prosecutor was the competent authority in law to Institute any kind of suit that may have to be filed for enforcement of rights of the the Institute. By Article 1 of the Statutory Order No.7883 of 1960 it was provided that the said Institute was founded by Order No.332 dated 24.11.1871. Therefore this **Statutory Order No.7883 of 1960** is another piece of documentary evidence on record which unequivocally goes to show that in the year 1960 the Institute was wholly owned, controlled and managed by the Government and the then Governor General of the State of India was exercising full administrative control over the said Institute for all purposes.

31. The epoch making event so far as the State of Goa is concerned, was the liberation of the territory on 19.12.1961 from the erstwhile colonial power of Portugal. The territories comprised in Goa, Daman and Diu under the Portuguese rule were annexed by the Government of India by conquest on December 16, 1961. By virtue of Article 1(3)(c) of the Constitution of India, these territories became a part of India. For the purposes of making provision for the administration of the territories, the President of India, in exercise of the powers conferred upon him by Article 123(1) of the Constitution, promulgated on 5.3.1962 Ordinance No.2

of 1962, called the Goa, Daman and Diu (Administration) Ordinance. On 27.3.1962, the Indian Parliament enacted the Goa, Daman and Diu (Administration) Act, 1 of 1962, replacing the aforesaid Ordinance with effect from 5.3.1962. On the same date, the Parliament enacted the Constitution (Twelfth Amendment) Act, 1962, whereby Goa, Daman and Diu were added as Entry 5 in Part II of the First Schedule to the Constitution and as clause (d) in Article 240 of the Constitution with retrospective effect from 20.12.1961. Thus, Goa, Daman and Diu became a part of the Union Territories of India with effect from the date of their annexation by conquest. After liberation of Goa from the Portuguese rule and on Goa becoming a part of territory of India, all erstwhile Portuguese citizens residing in the territory of Portuguese India acquired Indian citizenship and all the statutory orders issued by the Governor General of State of India, issued in exercise of powers conferred on him under the Portuguese Constitution, ceased to be operative.

32. At this stage, it is necessary to reiterate the well settled legal position when new territory is acquired, whereby an act of State there is cession of territory by one State to another, the subjects of the former State can enforce only those rights which the new sovereign recognises. Similarly, where there is

acquisition of territory by a State, as between the new sovereign and the subjects of the former sovereign who become the subject of the new sovereign by acquisition of territory, the rights of such subjects against the new sovereign depend upon recognition of liability by the new sovereign.

33. The recognition of old rights, if any, may be made by proper statutory provision whereby rights which were in force immediately before the appointed date are saved. In **Vajesingji Joravarsingji v. Secretary of State**, 51 Ind App 357 : (AIR 1924 PC 216) Lord Dwnedin said in an off-cited passage:

" ... when a territory is acquired by a sovereign state for the first time that is an act of state. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by recognised ruler. In all cases, the result is the same. Any inhabitant of the territory can make good in the municipal Courts established by the new sovereign only such rights as that sovereign has, through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing
..... "

The rule of international law on which the several Privy Council decisions as to the effect of conquest or cession on the private rights of the inhabitants of the conquered or ceded territory are founded has become a

part of the common law of this country.

34. Turning to the facts of this case in hand, assuming for the sake of argument that the petitioner Nos. 2 to 4 had some rights against the Portuguese Government to take part in the management of the institute which, in our opinion, has come to an end with the conquest of Goa by the Government of India on 20.12.1961. In absence of any allegation that the right was re-granted either by a private agreement or by executive fiat, the sole question is whether the said petitioners have any legal right to claim interest in the management of the institute in question after 20.12.1961. The another incidental question would be whether the continuance, ipso facto, of the old laws after the conquest or annexation would tantamount to recognition, without more, of the rights and privileges, if any, accruing under those laws. Secondly, the general rule is naturally subject to any specific provision to the contrary which the new Government may make. These questions posed are on the similar lines as were posed in the case of **Vinodkumar v. Gangadhar** (supra) and will have to be answered in the same manner in which they were answered by the Apex Court in the case of **Vinodkumar vs. Gangadhar** relying on its earlier judgment in **Prema Chibbar v. Union of India**, AIR 1966 SC 442.

35. The decision in **Prema Chibar v. Union of India** (supra) is an authority for the **propositions** that the laws which were in force in the conquered territory are continued by the new Government after the conquest is not by itself enough to show that the new sovereign has recognised the right under the old laws; and, the rights which arose out of the old laws prior to the conquest or annexation can be enforced against the new sovereign only if he has chosen to recognise those rights; and, that the period between 20.12.1961 when the territories comprised in Goa, Daman and Diu were annexed by the government of India and 5.3.1962 when the Administration Act came into force, was a period of interregnum.

36. Whether the new sovereign has recognised the rights of the new subjects as against itself and has undertaken the liabilities arising thereunder is a question of fact depending upon the action of the new sovereign after acquisition of the territory concerned. Let us examine this aspect of the matter on the basis of material, if any, on record.

37. The recognition of the rights of the petitioners by the Government of India will, of course, depend initially upon whether, as a matter of fact, they had acquired any alleged right to claim management of

the said Institution 'IVG' which, in our opinion, they had none. There is nothing on record to show whether after annexation of Goa, Government of India, had at any time recognised the alleged right of the petitioner Nos. 2 to 4 to take part in the management of the Institute in question.

38. In the instant case, there is no material on record to suggest that at any point of time the alleged rights of petitioner Nos.2 to 4 to take part in the management of the said Institute 'IVG' were recognised either during interregnum or thereafter or any point of time subsequent thereto by the Government of Goa. In absence of any material in this behalf, assuming for the sake of argument that petitioner Nos.2 to 4 had some right to take part in the management of the said Institute 'IVG', those rights, in our opinion, have come to an end and in absence of any allegation that the right was re granted either by any private agreement or by executive fiat, the rights of petitioner Nos.2 to 4, if any, automatically came to an end when the territories comprises in Goa, Daman and Diu under the Portuguese Rules were annexed by the Government of India by conquest on 20.12.1961. In this backdrop, assuming that in the said Institute petitioner Nos.2 to 4 had some rights to take part in the management of the Institute, may be because of the blessings of the then

Government, even then those rights came to an end on 20.12.1961 when the territories comprised in Goa, Daman and Diu under the Portuguese Rule were annexed by the Government of India by conquest. Therefore, it is not possible to hold that any of the alleged members of the said Institute 'IVG' including petitioner Nos.2 to 4 were in the management of the said Institute in their individual rights, at any rate, after 20.12.1961.

39. The said 'IVG', however, after 20.12.1961 continued to function as a Government Institute controlled and financed by the State. At this juncture, it will be significant to note that the said Institute was not receiving Government grants or Government subsidy as such. All its expenditures, including expenditure on payment of salaries, publication of magazines, repairs and maintenance of the building which belonged to the Government itself, were incurred by the Government from budgetary provisions made in that behalf in the budget. In order to establish this fact, the copies of the relevant extracts of the budgets pertaining to the budgetary provisions made for the Institute were produced on record of the petition which unequivocally prove the case sought to be made out by the State.

40. It appears that after liberation of Goa, the

then Lieutenant Governor by order dated 9.7.1963 changed the name of Institute from "Institute Vasco da Gama" to "Institute Menezes Braganca". This change in the name of the Institute was effected from 10.7.1963, the 25th death anniversary of Shri Menezes Braganca who was responsible for the liberation of Goa. **This order of the Lieutenant Governor dated 9.7.1963** is also another piece of evidence on record which unequivocally demonstrates that even after the liberation of Goa the said Institute was treated as the Institute run, controlled and managed by the Government of Goa.

41. In the year 1991, it appears that a fresh draft statute was prepared by a few individuals may be by petitioner Nos. 2 to 4 and came to be forwarded to the State Government and the said draft remained pending with the State Government for consideration for a considerable long time. During the pendency of this draft statute, it appears that some differences cropped up in between the said group of persons; who were purportedly looking after the said Institute which attracted the attention of the Cabinet and ultimately, on or about 19.3.1997 a Cabinet decision was taken by the Government of Goa, to repeal Portaria/Provincial Order No.332 of 24.11.1871, pursuant to which the Goa (Portaria Provincial No.332) Repeal Bill, 1997 (Bill No.14 of 1997) was passed by the Legislative Assembly on

26.3.1997. The provisions of the impugned legislation, namely, the Goa (Portaria Provincial No.332/1871) Repeal Act, 1997 provided that all the assets and liabilities of the IVG created by the said Portaria/ Provincial Order, now known as Institute Menezes Braganca shall stand vested in the Government. all persons in custody of the assets of whatever kind of the said Institute were directed to hand over the same to such authority as may be specified by the Government.

42. By subsequent legislation known as the Goa (Institute Menezes Braganza) (Supplemental Provisions) Act, 1997 it was further provided for vesting of assets and liabilities of the said Institute in the Government, in pursuance of the Goa (Portaria Provincial Order No.332/1871) Repeal Act, 1997. The Managing Committee or any body or association of persons, whether duly constituted or not, which had any claim for managing the affairs of the said Institute by virtue of any provisions of law or otherwise came to be dissolved and provision was made for adjudication of the claims and liabilities from the persons who had any claim whatsoever to any property or other asset of the said Institute on the appointed date. It was also provided that such persons may make an application to the officer as may be appointed by the State Government for determination of their claim and compensation payable

thereof by the Government and after determination of the compensation a right of appeal to the aggrieved person was provided to the Administrative Tribunal constituted under the Goa Administrative Tribunal Act, 1965.

43. With the aforesaid developments from time to time extracted hereinabove and the operation of the various legislative diplomas, decrees and orders, it would be clear that though the said 'IVG' was initially established by the private individuals, but after the institute became dormant and remained so defunct for almost 50 years and , the same was revived with the assistance, efforts and blessings of the then Government. The Governor General of the State of India was all the while exercising effective control over the said Institute and the same was managed, functioned, controlled and regulated by the various legislative diplomas, orders and decrees promulgated from time to time as Government Diploma and after liberation of Goa, the Lieutenant Governor of the then Union Territory of Goa exercised control over the said Institute and all financial needs of the said Institute were met the State budget.

44. All the above factors put together, in our opinion, are sufficient to draw the conclusion that the said Institute ('IVG'), after 1875, was an official body

of the State and functioned as one of the arms of the Government and individual members had no independent role independent of the blessings of the government even on the day when the event of liberation of territory of Goa on 19.12.1961 took place. In this background, the said Institute (IVG/IMB) was always recognised as the Institute owned, controlled and managed by the State Government. Therefore, it is not possible to hold that any of the alleged members of the Institute were in the management of the said institute in their individual rights and hence there is no question of any breach of constitutional guarantees or rights. In view of the conclusion reached by us, in fact, it is not necessary for us to deal with the other contentions raised by the petitioners on the touch stone of the alleged violation of the Articles of Constitution of India except with respect to the breach of principles of natural justice and malafides alleged in the petition.

45. The argument of breach of principles of natural justice advanced by the learned counsel Mr.D'Costa is also devoid of any substance. The action complained of is legislative in character. The legislative action with which we are concerned is not open to challenge on this count. In this behalf it would be profitable to refer to the judgment of the Apex Court in case of **Union of India v. Cynamide India Ltd.,**

(1987) 2 SCC 720, the Apex Court held that-

" ... legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of Parliamentary legislation, the proposition is self-evident. In the case of subordinate legislation, it may happen that Parliament may itself provide for a notice and for a hearing. But, where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity...."

Another challenge set up in the petition to challenge the impugned legislations is of malafides as advanced by Mr.D'Costa appearing for the petitioners. The same is also without any substance. It is well settled that no malice can be imputed to the legislature. Any legislative provision can be held to be invalid only on the ground like legislative incompetence or being violative of any constitutional provisions. The learned counsel for the petitioners could not point out any infirmity in the impugned legislations. The burden to establish malafides is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof, if they are conspicuously absent in writ petition.

46. The legislature, as a body, cannot be accused

of having passed a law for an extraneous purpose. Its reasons for passing a law are those that are stated in the Objects and Reasons as stated in this case. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law malafide. This kind of "transferred malice" is unknown in the field of legislation.

47. Incidentally, we may indicate that even under Portuguese Civil Code, the coercive dissolution of the association formed by the individual members was permissible as is clear from the Treaty of Civil Law by Cunha Gonsalves; a commentary to the Portuguese Civil Code (1929 edition Vo.1 pg.820), which reads as under:

"The coercive dissolution may be ordered by the authorities only on grounds of public order or revolutionary violence, as it happened in Portugal and other countries with the religious orders, particularly the Company of Jesus, or because the association is not fulfilling the objects for which it was founded, imposing on it merger with other associations, or because its members have depleted to an extent that there no members constituting, at least, twice the number required for the managing committee, or because the members have left the association."

Emphasis supplied.

Reading of the aforesaid passage would show that it

would have been open even for the Portuguese Government to dissolve the association on the ground that its members have depleted to an extent that there are members constituting, at least, twice the number required for the managing committee, or because the members left the association. The rights of petitioner Nos.2 to 4, if any, were subject to the above provisions. If that be so, it was open even for the Portuguese Government to dissolve the association. The Government of the day cannot be said to be in worst position than that of the Portuguese Government. Even under the Portuguese Civil Code, it would not have been open for the petitioners to challenge the action had there been dissolution in the above circumstances, though the hands of the present Government cannot be shackled with the aforesaid provisions.

48. The Government of the day being governed by the Constitution of India was well within its rights to exercise legislative powers given by the Constitution of India enumerated in Legislative Entry Nos.12 and 32 of the List II of VII Schedule to the Constitution. By the impugned legislation, the Institute 'IVG' has been taken over. Although with the taking over of the Institute 'IVG', the persons like petitioner Nos.2 to 4, who were claiming to be in the management of the institute, have lost their rights, if any, but that is the consequence

of all the acquisitions.

49. One more submission which needs consideration is, if the Institute IVG was controlled, managed and looked after by the Government of India and thereafter by the Government of Goa and if it was not the Institute formed by the private individuals, then, in that event,, the impugned legislations were not necessary. Because the State is not expected to acquire its own assets. To this submission the answer is simple. The impugned legislation became necessary because group of persons were claiming rights of the management including ownership to the assets of the Institute. The picture was not very clear. The statutory orders issued from time to time referred to hereinabove and some of the conditions or the terms incorporated therein did lean in favour of the belief and submissions advanced by the petitioners though weight of evidence was running contrary to this belief. Therefore, in order to avoid any doubt, the legislative powers were exercised by the legislature of the State of Goa. Merely because the words "taken over" were used in the Act, cannot go to the advantage of the petitioners to contend that it was not the State controlled Institute. It is the settled principle of law that one word here and there cannot be taken advantage of. The legislation has to be understood in its proper perspective. There is always a

presumption in favour of the constitutionality of an enactment and the burden is upon the person who attacks it to show that there has been a clear transgression of the Constitutional guarantee. IT must be presumed that the legislature understands and correctly appreciates the needs of its own people. Therefore no fault can be found with the impugned legislations merely on the basis of use of the word "take over" . The said words cannot be read out of context.

50. We, therefore, hold that the petitioners have no fundamental rights to enforce and no such rights have been infringed by virtue of the impugned legislations.

51. Having recorded our adverse findings against the petitioners, this petition deserves to be dismissed, with a hope that the respondent- State shall maintain Artifacts and/or Paintings and/or coins and/or other valuable articles and shall make all attempts to preserve Portuguese culture for future generation.

In the result, petition is dismissed.

Interim relief stands vacated. Rule stands discharged
with no order as to costs.

(V.C. DAGA)

JUDGE.

(P.V. HARDAS)

JUDGE.